

LICENSE APPEAL COMMISSION  
CITY OF CHICAGO

Martin's Sutjeska Bar, Inc. )  
d/b/a Clark's on Clark )  
Licensee/Revocation )  
for the premises located at )  
5001 North Clark Street )  
)  
AND ) Case No's. 09 LA 42 &  
) 09 LA 37  
)  
Chicago Eagle-Gold Coast, Inc. )  
James M. Stephens, President )  
Applicant (Tavern) )  
for the premises located at )  
5001 North Clark Street )  
)  
v. )  
)  
Department of Business Affairs and Consumer Protection )  
Local Liquor Control Commission )  
Norma I. Reyes, Commissioner )

ORDER

OPINION OF CHAIRMAN FLEMING JOINED BY COMMISSIONER SCHNORF

These cases are being consolidated for the purpose of issuing opinions because the decision in the Chicago Eagle-Gold Coast, Inc. applicant case depends on the decision entered on the revocation case against Martin's Sutjeska Bar, Inc. This decision will analyze each case individually but if appeals are filed it appears to this Commissioner that judicial economy is served by the issuing of this consolidated decision.

The matter of Martin's Sutjeska Bar, Inc. will be discussed first. This matter arises out of

a citizen's appeal of an order of revocation as to the premises located at 5001 North Clark Street which was entered on April 24, 2009. There was no objection to this citizen appeal. While it is somewhat unusual such an appeal is allowed under Section 7-9 of the State of Illinois Liquor Control Act.

The original notice of hearing advised the licensee that a hearing would be held in connection with disciplinary proceedings regarding the City of Chicago liquor license and all other City of Chicago licenses issued for the premises located at 5001 North Clark Street. The only basis stated in this notice was the fact that on or about May 1, 2008, the licensee failed to submit an exterior safety plan in violation of Title 4, Chapter 60, Section 280 of the Chicago Municipal Code. A First Amended Notice of Hearing subsequently advised the licensee that the hearing would also address two additional counts. These counts alleged that on or about January 9, 2009, the licensee corporation was involuntarily dissolved which made the licensee ineligible to hold a City of Chicago Retail Liquor License pursuant to Title 4, Chapter 60, Section 030 (1) of the Municipal Code and pursuant to 235 ILCS 5/6-2(a) (10a), of the Illinois Liquor Control Act.

Since this is an appeal from a decision of the Local Liquor Control Commission to revoke a license the review by the License Appeal Commission is limited to these questions:

- a. Whether the local liquor control commissioner has proceeded in the manner provided by law;
- b. Whether the order is supported by the findings;
- c. Whether the findings are supported by substantial evidence in light of the whole

record.

The matter before Deputy Hearing Commissioner Stratton proceeded to a default hearing. Shawn Burnett-Whitaker testified she is the Deputy Director of the Department of Business Affairs and Consumer Protection. In that position she oversees the disciplinary hearing process for the department and maintains all files regarding the disciplinary history of licensees. Pursuant to ordinance passed in 2007 all late hour licensees were required to submit an exterior safety plan. An initial notice of this requirement was sent to late hour licensees on approximately December 19, 2007, advising the plan needed to be submitted by March 1, 2008. A follow-up notice was mailed to this licensee on March 14, 2008, stating the required plan had not been submitted and that the deadline for submission of the plan was the end of business on March 21, 2008. That notice specifically warned that failure to file the plan would result in direct enforcement which could include fines, suspension and/or revocation of their licenses. This notice is in evidence as City's Exhibit 6. The Department of Business Affairs and Consumer Protection had not received any late-hour safety plan from the licensee as of the date of hearing on February 27, 2009.

Allowed in evidence was City's Exhibit 5, which is a Certificate of Dissolution of Domestic Corporation from the State of Illinois Secretary of State. It reflects that Martin's Sutjeska Bar, Incorporated, was dissolved as of January 9, 2009, for failure to file an annual report and an annual franchise tax. City's Exhibit 4, was allowed in evidence as the past disciplinary history of the licensee. This history includes the following:

- a. A \$2,000 voluntary fine for failure to display a tobacco license on November 26, 2003.

- b. A five day closing for possession of a controlled substance on April 10, 2005.
- c. A violation warning for a simple battery on October 6, 1990
- d. A \$300.00 voluntary fine for failure to notice the police on February 8, 1994.

It also reflects a sale to minor - not a SAM on November 15, 2000, but no disposition is listed.

Both the applicable sections of the Municipal Code 4-60-030 (1) and the Liquor Control Act, 235 ILCS 5/6-2(a) (10a), state no license shall issue to a corporation unless it is incorporated in the State of Illinois. Since the corporation was dissolved as of January 9, 2009, the liquor license for this establishment had to be revoked.

Since revocation was required based on the dissolution of this corporation it is not necessary to address whether the failure to file the required exterior safety plan is an additional basis for revocation of the liquor licenses.

The findings of fact prepared by the Deputy Hearing Commissioner and adopted by Commissioner Reyes states that the Deputy Hearing Commissioner recommended revocation as the appropriate penalty based on the current charges and the licensee's past disciplinary history.

As the disciplinary case against Martin's Sutjeska Bar, Inc. was ongoing, Chicago Eagle-Gold Coast, Inc. was applying for a license at this 5001 N. Clark location. On April 16, 2009, this application was disapproved because the location was the site of a pending disciplinary hearing. A timely notice of appeal on this disapproval was filed on April 29, 2009. A First

Amended Denial Letter was sent to Chicago Eagle-Gold Coast, Inc., on May 13, 2009, denying the application based on an April 24, 2009, order of revocation. (This is the order of revocation in the Martin's Sutjeska Bar, Inc. case.) This denial references the Chicago Municipal Code 4-60-180 which states:

When any license issued pursuant to this chapter shall have been revoked for any cause, no license shall be granted to any person for the period of one year thereafter for conducting the business of selling alcoholic liquor in the premises described in such revoked license unless the revocation order was entered as to the licensee only.

Since there is now a one year ban on liquor licenses at this location the application was denied.

The appeal of a denial of an application was heard by this Commission on July 21, 2009.

The issue before this Commission was to decide at a de novo hearing the propriety of the denial of this license.

The City called Gregory Steadman as its witness. Mr. Steadman is the Executive Legal Counsel with the Department of Business Affairs and Consumer Protection, Local Liquor Control Commission. He oversees applications for liquor licenses. He is aware of an application for a liquor license at 5001 N. Clark by Chicago Eagle-Gold Coast, Inc. He reviewed the application and was involved in the final review. He became aware that at the time Chicago Eagle-Gold Coast, Inc. applied there was a pending disciplinary case against the current licensee Martin's Sutjeska Bar, Inc. In these situations the business consultants are instructed to do a check for pending cases and to inform an applicant that the pending case could affect the ability of the license to be issued. The applicant is asked to sign a pending case affidavit. City's

Exhibit 2, in evidence, is the pending case affidavit signed by Mr. Stephens on behalf of Chicago Eagle-Gold Coast, Inc. It is dated September 19, 2008, and advised Mr. Stephens of a hold on the present licenses because of a current pending disciplinary hearing. It further told Mr. Stephens that this application could be subject to disapproval due to the pending disciplinary matter against the current licensee. Mr. Steadman explained the original letter of denial, in evidence as City's Exhibit 2, was sent because of the pending case. He further explained City's Exhibit 3, in evidence, was the amended denial sent after the pending case was resolved. That pending case resulted in a revocation of all licenses at 5001 N. Clark and required that Chicago Eagle's application be denied because no license could issue to this location for a period of one year from the date of revocation. Mr. Steadman did admit there have been cases when revocation orders are entered against a licensee only. Those usually occurred in cases when the basis for revocation was an eligibility factor with the applicant and no prior bad acts. While there were no eligibility issues with the current applicant there were prior bad acts with the licensed establishment that was there.

James Stephens testified he owns 100% of the shares of the applicant corporation. He is the sole officer and director of the company and is one of the beneficiaries of the land trust that holds legal title to the property. He tried to purchase the exiting business but that deal never closed. He applied for a new license in February of 2009. He did sign City's Exhibit 2, but did so only after he reviewed Applicant's Exhibit 1, in evidence, which showed the only open violations was failure to submit a late-hour safety exterior plan. It also showed a previous 5-day closing. Based on his experience with other bars he was under the impression that it was not

probable that discipline would go from a 5-day closing to a revocation.

William Dunkley and Joseph Micci testified in favor of the issuance of this license. Since this is not a deleterious impact case this evidence is not relevant to the issue in this case and need not be summarized.

It should be pointed out that the evidence in case 09 LA 37 - Chicago Eagle-Gold Coast, Inc. case, is not part of the record in case 09 LA 42 - Martin's Sutjeska Bar, Inc. It has not been and cannot be considered by this Commission in deciding that case.

With respect to the Martin's Sutjeska Bar, Inc. case, the Local Liquor Control Commissioner did proceed in the manner provided by law. The findings that the corporation was involuntarily dissolved and therefore ineligible for a license under the Chicago Municipal Code and the Illinois Liquor Control Act are supported by substantial evidence in light of the whole record. So is the finding that this licensee failed to submit a late-hour exterior safety plan as required by ordinance. The Deputy Hearing Commissioner reviewed these findings and the past history of the premises and found an order of revocation of all the licenses for the premises was appropriate. This order is supported by the findings. The fact that the Deputy Hearing Commissioner might have entered an order of revocation for only the licensee, not the premises, does not change that fact.

With respect to Chicago Eagle-Gold Coast, Inc., the City of Chicago did prove by a preponderance of the evidence the propriety of the denial of the application. The fact that Mr.

Steadman testified in this case that there have been cases where a revocation dealt only with a licensee and not the premises does not change the fact that the basis for denial in this case was a properly entered order of revocation of the premises.

The decision of revocation of the liquor license issued to Martin's Sutjeska Bar, Inc., is affirmed.

The decision to deny the application for a Tavern liquor license by Chicago Eagle-Gold Coast, Inc. is affirmed.

**THEREFORE, IT IS HEREBY ORDERED that the said order or action of the Local Liquor Control Commissioner of the City of Chicago be and the same hereby is AFFIRMED.**

FURTHER IT IS ORDERED AND ADJUDGED that the order revoking the liquor license of the APPELLANT is AFFIRMED.

Pursuant to Section 154 of the Illinois Liquor Control Act, a petition for rehearing may be filed with this Commission within TWENTY (20) days after service of this order. The date of the mailing of this order is deemed to be the date of service. If any party wishes to pursue an administrative review action in the Circuit Court, the petition for rehearing must be filed with this Commission within TWENTY (20) days after service of this order as such petition is a jurisdictional prerequisite to the administrative review.

Dated: August 27, 2009

Dennis M. Fleming  
Chairman

Stephen B. Schnorf  
Member